[Ibuban]

/207 cont./

133 [137] dangerously close. To the N. and N.-E. it is still covered by a forest of holm oaks, junipers, and lentisks, where the villages have had to clear a place for themselves parsimoniously. To the S. the lands of Iwulla almost reach as far as the village of Tugg Lkheyr, hanging over it by the Awrir i-ysemgan, "the hill of the Negroes," with colossal populations of opuntia. To the E. the country is cut not only by the valley of the asif n.-a. Lh'sen, but by the high brows of the Amuddur (2,075 meters), through the Wanz'id' possessions which advance to the north like a duck's bill to rejoin the /208/ domain of the a. Lh'sen "of below" 233 423 613 (Awines and Buteghradin). The pasturage is so restricted, especially on the side of the Ameznir, that these schistose slopes are delimited among ikhs-s users. This notably at Tugg Lkheyr and Timskert, where this division of the sterile wasteland appears to have been pushed to its last degree and to have developed a whole red tape of documents of ownership.

166 Yet this mutilated sector represents a reordering, due to the intervention of the "caid" Lmokhtar, for whom one will note the topographical strategy, adroit at reserving for his what we call the lines of communication. Formerly, the a. Lh'sen of 166 Awines had occupied the Ibuban. The present inhabitants, of ●432 heteroclite and successive origins, settled by way of purchase. But the avarice of these driven-back populations enabled them to overflow it anew on the, not political, but juridical plane. They bought lands from their neighbors from Ammern and a. Musa, in the Ilikri.

312 [242] Nothing more precarious seemingly than this country without water. Barely two or three miserable sources, all just suitable to give drink to the villages and to support, at the price of a long-term rotation (12 days for three ikhs-s at Timskert, for example), a few poor patches of gourds and onions. The only resource is that of the streaming water. It nevertheless appears considerable in case of heavy rain. The reserves of the soil, long stored, then 241 liquefy. One has barley for four or five years. Or one waits for the storm, rrâda, which in general at the end of August marks the time of the musêm of Tamarut, in Demsira, to "carry off" a

/277 cont./
the usual procedure of these obligations of group to patron. Such testimony is rare: the beneficiaries keep them secret (2).

2. We have been able, however, to procure for ourselves at the zaouia of the Mez'ud'a one of these acts, which we reproduce as Figure 10, page 390.

Perhaps even many of these contracts are pure etiology of a custom in being and for which one should have tried to place the origin and to find the explanation.

Let us pass now to a second element of institution: these mâruf-s of which there has already been mention many times. This word, used here rather than that of musem, has been attested since an ancient epoch and paradoxically combines the Koranic notion of "good" and that of "customary usage." Veritable play on words, which seems intended, since a number of customary codifications have feigned to be based on it and sometimes even yet it is invoked by /278/ /Fig. 10 appears here/ /279/ innovating jurists. The mâruf is the seasonal rite incumbent on a group with regard to a saint. It usually includes a blood sacrifice, tighersi, but differs from other gatherings, such as the tinubga or tiwilt, which have no religious import. The chchard' is found in the old acts in the form of testamentary prescriptions, accompanied by invocations and conditional curses: last words of the dying saint to his servants. Sometimes accompanied by homilies, it constitutes, for multisecular lapses, the charter regulating the relations of a group with the local representative of the sacred.

Several saints possess an estate, ras l-mâl, maintained from year to year by the sale of pieces of meat. This sale is done at auctions. It releases the emulation, itself ostentation, which this kind of concourse calls up. But the money owed is almost never demandable until the following year. An embryo of credit thus forces its way through. It includes inscription on written rolls and the montagnard notariate is actively occupied with it. Elsewhere we have described the demarcations between the profane

[TEXT CONTINUED ON PAGE 391]

/360 cont./

425 tried to break, and whose riposte, significantly, assumed a pious
175 and juridical coloring. The jamāᶜa cadi of Taroudant, Saᶜīd ibn ᶜAlī al-Hawzālī, consulted the saint Muh'ammad at-Tamanārtī, who, by classic reasoning of Malékite /Maliki/ pragmatism, concluded in favor of tolerance: "And that is why this practice is thus perpetuated throughout the country of the Sous up to our day."

425 If the saints come to the rescue of the lender at interest, it is because it is a matter of a particularly powerful social fatality. In fact this mode of credit on a landed-property pledge is not only an economic and juridical category. It is also a sentimental motive power: the lessee's effort to consolidate his possession is opposed by the continuous attack of the lessor. Any means will do: feint, fraudulent denegation, falsehood, etc. All is fair in war. The two parties, as an amghar of the Seksawa told me, confront each other like cat and dog: one seeks to disguise the rrahn as a definitive sale, the other to do away with it without any outlay by title of pure and simple monopoly. More than gain, it is probably an advantageous position, fame in the bosom of the group, that one seeks. That against preoccupations of subjective sincerity, indeed old rules of obligation that the rrahn still expresses, /361/ this is undeniable. But what counts here is triumph in the joust. Something superior even to patrimonial legitimacy is affirmed in this tension that divides the group in conflicts of sometimes several generations. These mores give the skillful litigant and even the falsifier his chance. Must one accordingly attribute them to the decadence of the institutions? No, undoubtedly, but rather to a procedural primacy. And beneath this last is divined an old agonistic structure.

● 432

The Ruse-Sale

This is undoubtedly what explains the fact that, in spite of all the objections against landed-property alienation, it nevertheless exists. It is rare in Seksawa, and certain neighboring populations have purely and simply abolished it. Out of four "sales" one is affirmed as definitive: such is the ratio

/361 cont./

• 432 that one can very roughly imagine from the lists of ancient acts that sometimes fall into our hands. Naturally during periods of famine usury practices its ravages. People remember in a. Ab-
[175] della the years 1295-96 Heg. when a piece of land was sold for one rifl! But the grandfather of the present amghar confiscated all these acts one day, put them in a pile the height of a donkey in Inzzlyma, and set them on fire: and everyone regained his rights.

This was a violent procedure. There are others. In fact the ratio of sales is much smaller than that of one out of four. Now, whatever might be the nature of the terms that there has been care to have consigned to it, the local law will change the resiliable act, make it slip in some way into the inferior category, if the wording in the least presents a weakness or irregularity of technical order: a single notary instead of two, and two who are qualified; the seller's suddenly producing an iqâla, "resiliation," the fact that there has been no tradition; that the lessee does not have peaceable possession, etc. Obviously all sorts of obstacles are raised against the consolidation of the sale.

It is thus that a dissertation, undated, but attributed to the son of sidi Lah'sen u Tiqqi, who would have to go back to the second third of the seventeenth century, assembles in a potpourri all the nullities that can infirm a sale: indetermination, chance, injury, conditional stipulation. Fine manifestation of pedantry conspiring with the inalienability that local instinct wants and which such codification will express by decreeing that whoever is convicted of wanting to alienate land to a foreigner must sacrifice a cow as an offering to the jemâa.

/362/ Indeed, even better, the seller can unilaterally go back on his act, either because he declares himself wronged or constrained: this is then a declaration of istir^{c}â', or because he "repents": this is then an istighfâr al-bay^{c}. Lacking written jurisprudence, one poorly knows what the judiciary effect of these declarations might be. Undoubtedly to contribute to creating a climate propitious for revendication, rather than to orient the procedure, henceforth bilateral, decisively. A trace undoubtedly,

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● 432 as has been seen, of a very ancient imprecatory law that disappeared under the adaptations to the fiqh. An amusing expression of these repentances is offered by an act from Imsker. The witness goes back on his declaration, proclaiming that the sale did not take place, he was misled by Satan the accursed and the enticement of a few pounds of honey! (1141 Heg.: 1729.) It is not rare that the troubled conscience of the t't'olba becomes clear toward the end by the inscription of these curious acts "of repentance," istighfâr, infirming such-and-such of their testimonies. The act remains hidden at the bottom of a leather bottle. Its accidental discovery will produce a striking procedural event and will cause everything to begin again at zero: the ancient possession will no longer count for anything in opposition.

Correlatively a veritable profusion of orthodox formulas will come to color the hazardous alienations and compensate for their obvious precariousness by a virtuous verbalism: "Firm, licit, executory, definitive purchase, exclusive of any cause for redemption or option, concluded in full knowledge and elimination of ignorance concerning the price and the thing a price was put on, for a sum and a forfeit of an ounce and a half of whole coin, the two rightful claimants being put in possession, one of his money, the other of his property." It is doubtlessly thus that the buyer runs his risk. Although he enters into a perpetual dialectic with the progeny of his seller, he hopes to make his rights valid, and, seniority helping, to constitute an aṣl. It is possible that this aṣl may be contrary to the old agnatic distribution; in any case, the thing will not go far, since about five centuries of play of notarial writing have not noticeably disturbed the order of the grounds of the valley.

These purchases and these rrahn-s ordinarily bear on, rather than land topographically delimited, parcels individualized by the name of the legitimate owner in such-and-such a quarter. The expression is sometimes: "all that on which his name bears" (1).

[171]

1. In a completely different society, the France of the upper Middle Ages, it was the name of the

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• 432
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/footnote 1 continued/ estate that identified the land: a formula diametrically opposed to ours and which rests, as has been seen, on a completely different conception of the "field." Cf. Fustel de Coulanges, L'alleu et le domaine rural /The allodium and the rural domain/, 1889, p. 18.

With any aim at comparativism set aside, but by title of a geographical lesson, /this footnote is continued on the following page in the original source/ let us note that in the milieu, similarly montagnard and conservative, of Andorra the so-called sale with power of redemption is by far the most frequent. Like the rrahn of the Chleuhs /Shluh/, the Andorran redemption can be very long term, transferable to a third party, and the operations of repurchase are connected, in their validity and their effect upon the pending harvest, with considerations of agricultural season! J.-A. Brutails, La coutume d'Andorre /The customs of Andorra/, 1904, pp. 198 sq.

432/363/ The sale is then called "aggregate," muchâ^{c} (1),

1. Al-^{c}Abbâsî, Ajwiba, lith., t. I, p. 169, l. 8 sq., defines this muchâ^{c} sale, the name of which he writes, ibid., p. 174, l. 15 sq. Locally muchû^{c} or lmuch^{c} is also said.

an expression of bookish origin that we will find to designate the collective, with an unexpected oriental analogy. Other terms are sometimes used: busiyyar or basiyyar in Nfifa, for example.
(195) Sometimes the pen of the writer even rises to hyperbole: a whole

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• 432 [195] [175] country is sold, a whole mountain canton. As an act of 1093 Heg.: 1687 says, "all of it is sold, including the jackal of the forest," jamiᶜ mâ la-hâ ff dhi'b al-ghâba.

To the lineage revendication, a term that appears to correspond to the patrimonial constancy of the ikhs, is added yet another resource: the chchfâa. This is a matter of something much broader than the faculty of pre-emption that the fiqh offers to the joint-tenant /Fr. coindivisaire/ of the seller. It is not even excluded that formerly the son would have been allowed to put it in opposition to the sales of his own creator. Such a pretension, monstrous in the eyes of the Mussulman law, and moreover of logic, was in 1952 seriously brought before the Tribunal coutumier. In fact, what the Seksawa call chchfâa could be defined: "the exception drawn from the patrimonial maintenance." Sometimes, and this is the orthodox case, a relative intervenes in order to make the option work to his advantage; but by definition this form is as rare as the sale itself. In the generality of the cases, the exception comes to act a long time after the event, as a means of having a habous sale rescinded. I thus come to this institution, which, in Seksawa country, does not at all have its classic or even Maghrebi physiognomy.

Agnatic Sequestration

794 423 What is striking first of all is that in the Seksawa mountains the goods of a zaouia, such as the zaouia of Lalla Aziza, a rather large estate-holder /Fr. domainière/, have the characteristics of a private estate. Likewise the turn for water, for example, earmarked for the marabouts on the downstream séguia. On the other hand, the private goods in the mountains are habous most of the time (2).

794 423 428 562 2. This meaning of the habous has been seen clearly by J. Lafond, Les sources du droit coutumier dans le Sous /The sources of customary law in the Sous/, 1948, pp. 81 sq. In

/363 cont./

794 423 428 562 /footnote 2 continued/ theory, however, the woman's right to inherit is absolute. It is exercised not only in the margin, /this footnote is continued on the following page in the original source/ Ih'ŝchit, that the "agnatic sequestration" lets exist, but it is a constant procedural theme. The women's share often being forgotten in the acts of sales, this will later bring about their annulment for all that concerns the women's share, and without prescription intervening. On the other hand, in neighboring societies, the Aghbar for example, if one is to believe the in. /unpublished/ monograph by Lepage, the woman cannot possess landed property in the Imsifern leff (a. Gasa, a. Tkssit, Amismatert). She may, on the contrary, in the Inghertit leff (a. Gâir, Imelwan, Iwensenkten).

[432]

[184]

794 428 562 [171] From these habous, pious devolution, even distant, /364/ is formally absent. That then is the extreme case of what has been observed nearly everywhere in North Africa under the name of "private habous," and where the exegesis has correctly seen a procedure of disinheritance of the women. Here the intention does not disguise itself by any stratagem, is crudely displayed. The founder specifies that, in case of extinction of the male branches, there will be a carry-over of the ensemble of the inheritance.

794 428 [175] War, emigration have sometimes posed this case. This is the so-called type of the inquirâd'. It is rather frequent. An interesting fatwâ of 1220 Heg.: 1805, emanating from a jurisconsult of the Imt'ddan, concludes with the help of texts that the carry-over of the habous should benefit only indigent heirs and in order of decreasing necessity (ih'tiyâj). A second opinion, bracketed with the first one, is further supported by the judgment of the jurists of the Gezzula, utilized in his Ajwiba by ᶜAbd Allah b. Ibrâhîm at-Tamulîî. Ar-Rasmûkî would have likewise judged in this manner.

/47 cont./

511 556 291 breasts by clasps of silver, bronze, or thorn. The men envelop themselves in a shorter piece of wool, unless they wear -- in our day this is the most frequent case -- a long shirt and breeches of cotton goods. A full black cloak, "akhnif," provided with a hood and decorated on the back with a curious red motif, completes the costume of the montagnard.

32 184 The Haut-Atlas /High Atlas/ is almost entirely devoid of local industries; by contrast, in the Anti-Atlas and the Sirwa there are several centers of activity, whose origin and traditions are still little known and would doubtless merit being studied.

325 326 184 Artisans /48/ there know how to smelt the iron and copper ores that are found in metallic deposits of minor importance and whose presence has been enough to perpetuate the reputation of mineral wealth of the South. Master workmen, nearly all descendants of black slaves, manufacture guns and daggers inlaid with silver. Others, Jews or Mussulmans, preserve the tradition [306] [178] of jewelry work of bronze, silver, and gold. There is not any doubt, to be sure, that these small industrial centers have already been hit by decline.

439 197 For twenty years the development of commerce in the whole of the Empire and the influx of commodities and manufactured goods from the Occident have been making their effects felt as far as the depths of the high valleys. To buy these novelties, the [432] [464] montagnard sells in the souks /sooks/ of the Dir his harvests of walnuts and almonds and part of his flock, and he sends his sons to work in the towns of the Gharb /Rharb/, to Algeria, and to France.

556 184 511 In the plains the distance between rich and poor increases still more rapidly. The former own the gardens; the others cultivate them. Irrigated fields give cereals, vegetables, and fruits in abundance. Olive and argan oil constitute another kind of wealth, which is transported in goatskins as far as the towns of the North. The greater proximity of the markets facilitates the introduction of foreign products in such a way that the material existence of a notable of the Sous plain tends to become similar to that of the other provinces where the Makhzen /makhzan/ has

343 /305 cont./
712 the Ida ou Mahmoud, and with a little patience and perserver-
124 ance it will be possible to see them. But the custom is known
[178] by all, and it is enough to interrogate the users in order to obtain the desired information and explanations concerning it.

/306/ Agadir of Ikis (1)

[621]

1. Ikis is a village of 55 hearths. It is at the same time the most important village of the subfraction of the Ait Haddiyous formed by Ikis and the Ida ou Gerioun villages.

(Figs. 1, 2, 3, 4 and Fig. 13). -- It includes 74 chambers on
[351] two or three stories; ten almond trees grow in the interior court-
[245] yard. In good condition, it has nevertheless not been utilized any more for ten years; it served for storing nuts, raisins, peaches, and almonds. The successive poor harvests caused by frosts on
[434] the one hand, the rise in the cost of living on the other hand,
[432] forced the natives to sell a greater quantity of their products on the souq /sook/ in order to procure cotton goods, sugar, tea, and cereals for themselves. The agadir has therefore been less useful these last years, but if a good harvest of fruits should happen, such as has not been seen for a long time, the collective storehouse would be utilized anew.

[423] The agadir is the common property of the people of Ikis.
[621] Each of them owns, by virtue of ancient rights, one, two, or
[432] three chambers; ten years ago, when the storehouse was in use,
[426] some chambers were sold -- very rarely -- or mortgaged. Each owner has the keys to his chambers. In calm periods the key to the entrance gate was deposited with the fqih of the mosque, who entrusted it to the users in case of need. In troubled periods
343 two guards were placed at the agadir. They were furnished by
712 the owners in turn, according to the number of chambers that
625 they owned, or then again they continued to stay and were then paid by all the users. The agadir, situated 300 meters from the

/312 cont./

343 712 685 In case of theft, if the thief is discovered, he must, irrespective of the punitive sanction that is imposed on him by the amghar /leader/ of the fraction, indemnify his victims. If the theft was committed through a hole made in the wall and if the thief is not discovered, the village in the midst of which the agadir is built is held responsible and must indemnify the victims [625] of the theft. If the theft was committed after breaking open the entrance gate, the guard is held responsible, must indemnify the victims of the theft. The latter must bring 24 coswearers in order to certify the quantities that they declare was stolen from them.

343 712 Agadir of Amassa (Figs. 10, 11, 22). -- It belongs to the people of Amassa (80 hearths), contains 80 chambers, 3 of [621] which are on the fifth story, all are utilized; most of the doors [423] are painted and worked. A room is mortgaged for 10 to 50 [426] douros and is sold for up to 100. The guard receives a kharrouba [432] of barley per year and per room, except for three rooms on the [625] fifth story, which pay nothing. In addition, the guard is fed, as [465] the fqih of the mosque is at the present time in Berber country. He is supplied with three meals a day, each owner taking his [685] day in turn. The three rooms on the fifth pay nothing, but in return they have no right to indemnity in case of theft.

[358] Each owner is obliged to make the repairs necessary to maintain his room in good condition. Thus the owner of one /313/ /Figs. 5 and 6 appear here/ /314 is blank/ /315/ /Figs. 7 and 8 appear here/ /316 is blank/ /317/ /Figs. 9 and 10 appear here/ /318 is blank/ /319/ /Figs. 11 and 12 appear here/ /320 is blank/ /321/ chamber may take action against the one of the one below, if it should happen to collapse, or against the one of the room above, if it lets water coming from the terrace [685] leak through. In case of theft, the custom is the same as for [184] the agadir of Ankoutouf.

[621] [423] Agadir of Tajelt Oufella (Fig. 12 and Fig. 23). -- It belongs to the village of Tajelt Oufella (33 hearths). It comprises 60 rooms and four stories.